UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/193,325	08/18/2008	Yann-Per Lee	8012DCD	4608

27752 7590 01/26/2017

THE PROCTER & GAMBLE COMPANY
Global IP Services
Central Building, C9
One Procter and Gamble Plaza
CINCINNATI, OH 45202

EXAMINER
VARGOT, MATHIEU D

ART UNIT	PAPER NUMBER
1742	

NOTIFICATION DATE	DELIVERY MODE
01/26/2017	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

centraldocket.im@pg.com
pair_pg@firsttofile.com
mayer.jk@pg.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte YANN-PER LEE, SAEED FERESHTEHKHOU, and KEITH J. STONE

Appeal 2016-004245
Application 12/193,325
Technology Center 1700

Before CHUNG K. PAK, TERRY J. OWENS, and JENNIFER R. GUPTA, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 17 and 19–27. We have jurisdiction under 35 U.S.C. § 6(b).

The Invention

The Appellants claim a method for making an apertured polymeric film-based web. Claim 17 is illustrative:

> 17. A method for making an apertured polymeric film-based web having a first side and a second side, said method comprising the steps of:

a. providing a first process of vacuum forming, said first process comprising providing a debossing/perforating cylinder comprising a pattern of surface aberrations about its periphery;

b. extruding a resinous melt onto the surface of said debossing/perforating cylinder;

c. applying vacuum to the first side of the film-based web from within said debossing/perforating cylinder so as to form a polymeric film-based web comprising three dimensional surface structures in the form of apertured surface structures;

d. providing a second process that is distinct from said first process, said second process comprising providing a pair of first and second rolls arranged so as to engage each other, at least one of said pair of first and second rolls comprising heated needles or heated pins; and

e. forming fluid transport apertures in said polymeric film-based web by applying the heated needles or heated pins of said second process to the first side of the film-based web,

wherein said apertured surface structures on the first side are substantially maintained by conducting step (e).

The Rejection

Claims 17 and 19–27 stand rejected under 35 U.S.C. § 103 over the Appellants' admitted prior art. [1,2]

OPINION

We reverse the rejection. We need address only the sole independent claim, i.e., claim 17. That claim requires forming apertures in a polymeric film first by vacuum forming and then by heated needles or heated pins.

---

[1] The Examiner omits, apparently inadvertently, claim 27 from the statement of the rejection (Ans. 2).

[2] For the Appellants' admitted prior art the Examiner cites to the Appellants' Patent Application Publication US 2009/0026651 A1 (Jan. 29, 2009) (Ans. 2). For consistency we likewise do so.

The Appellants acknowledge that the prior art includes a method wherein three dimensional surface structures (apertures 300) and fluid transport apertures (310) are formed in a polymeric film by a double-hydroforming process (¶ 45; Fig. 3) and that it was known in the art to form apertures by vacuum forming and by mechanical methods including heated needles and heated pins (¶¶ 74–75, 82).

The Examiner finds that the Appellants admit that the known aperture-forming methods are functional equivalents (Ans. 3–9).

The Examiner does not point out any portion of the Appellants' Specification which supports that finding, and the Appellants challenge the finding (Reply Br. 3–4). Accordingly, we do not accept the finding as fact. *See In re Kunzmann*, 326 F.2d 424, 425 n.3 (CCPA 1964). Consequently, the Examiner's conclusion based on the finding, i.e., that "[i]t would have been obvious to one of ordinary skill in the art at the time invention to have modified the double hydroforming process of the admitted prior art that forms the article in instant Figure 3 with the well-known aperture forming methods also taught in the prior art as disclosed in instant paragraphs 0073-0075 and 0082–0084 since they are known to be functionally equivalent" (Ans. 4), is not well taken.

The Examiner finds that "there are a limited number of methods by which the three dimensional patterning/microaperturing and forming of larger diameter fluid transport apertures are conventionally made" (Ans. 4), and based on that finding concludes that "it would have been obvious to one of ordinary skill in the art to pick and choose suitable methods based on availability and convenience" (*id.*).

The Examiner does not point to support in the Appellants' admitted prior art for that conclusion. In the Appellants' admitted prior art relied upon by the Examiner, both the three dimensional surface structures and the fluid transport apertures are formed by the same method (hydroforming) (¶ 45). The Examiner does not establish that the prior art discloses or would have suggested, to one of ordinary skill in the art, use of different aperture forming methods in sequence.

Thus, the record indicates that the rejection is based upon impermissible hindsight in view of the Appellants' disclosure. *See In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967) ("A rejection based on section 103 clearly must rest on a factual basis, and these facts must be interpreted without hindsight reconstruction of the invention from the prior art"). Accordingly, we reverse the rejection.

DECISION/ORDER

The rejection of claims 17 and 19–27 under 35 U.S.C. § 103 over the Appellants' admitted prior art is reversed.

It is ordered that the Examiner's decision is reversed.

REVERSED